

# CONFLICT CHECKS

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How modern technology can help your law firm evolve toward a more automated, secure, and transparent conflicts resolution model



**iManage**

Making knowledge work

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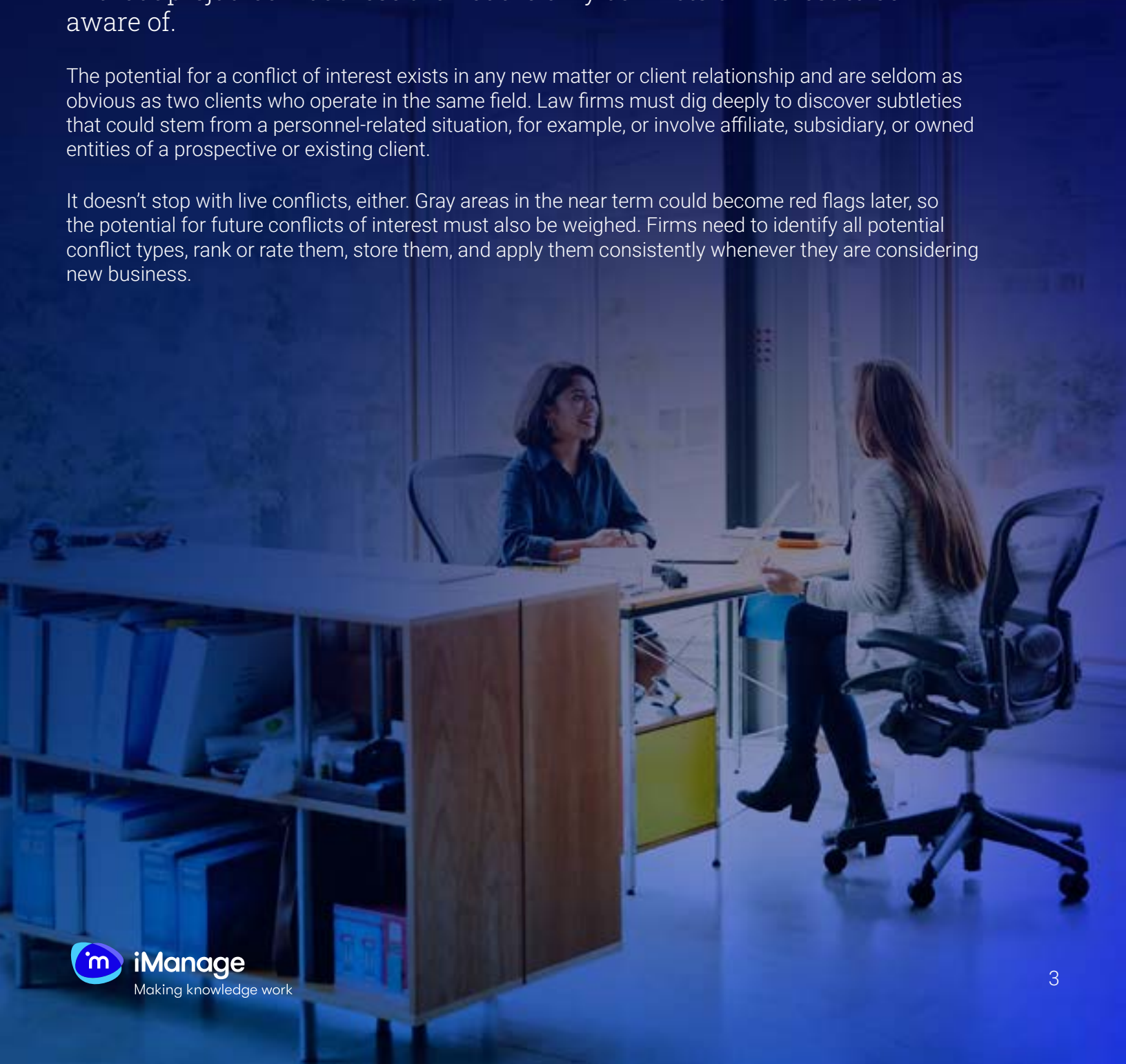
# EXECUTIVE SUMMARY

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Acting in the best interests of their clients is essential for law firms, and that puts managing any potential conflicts of interest among their highest priorities. The interests of two or more clients that are involved in the same or similar areas of activity must be given the same level of attention, without prejudice. But these are not the only conflicts of interest to be aware of.

The potential for a conflict of interest exists in any new matter or client relationship and are seldom as obvious as two clients who operate in the same field. Law firms must dig deeply to discover subtleties that could stem from a personnel-related situation, for example, or involve affiliate, subsidiary, or owned entities of a prospective or existing client.

It doesn't stop with live conflicts, either. Gray areas in the near term could become red flags later, so the potential for future conflicts of interest must also be weighed. Firms need to identify all potential conflict types, rank or rate them, store them, and apply them consistently whenever they are considering new business.



# THE CHALLENGING LANDSCAPE

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Conflicts of interest have become **more challenging** for firms to manage for a variety of reasons, which include:



## COMPLEXITY AND INFORMATION OVERLOAD

Legal professionals process increasingly large amounts of information at a level of detail that makes identifying potential conflicts of interest across multiple clients progressively more difficult.



## SPECIALIZATION

Many, if not most, firms focus on certain types of clients, adding to the likelihood of a conflict of interest arising, but without making identification any easier.



## INFORMATION SILOS

Teams focused on their own clients and areas of concern are often less efficient in sharing information than might be ideal, which can result in unresolved conflicts.



## THE SPEED OF CHANGE

Firms must be vigilant. There may be no conflict of interest between two or more cases today, but a conflict could develop between the same clients tomorrow.

Conflicts of interest must be identified and addressed quickly, either by declining to work with the client or by creating appropriate barriers or ethical walls to prohibit an information exchange that could bias the work.

In this white paper we lay out methods commonly used by law firms to identify conflicts of interest and consider their effectiveness. We highlight how leadership roles can share in the responsibility of minimizing conflict-related risks to the firm. Finally, we share a blueprint for evolving your current methods toward a more automated, secure, and transparent conflicts resolution model.

# ONE GOAL, MANY PATHS

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While the philosophy, approach, and procedures may differ between organizations, all firms want to avoid a potentially damaging conflict of interest between clients or matters – and perform conflicts searches in one form or another with this goal.

Some firms place the onus of searching for any conflict of interest on the attorney who brings in the work, while other firms authorize a centralized team to manage the conflicts process, but there are many variations on these themes. Broad searches are undertaken to uncover possible conflicts. The task of analyzing the results of these searches may fall to the attorney(s) who are closest to the client or matter, or they may be done in part by the centralized team.

One nearly universal conviction is that it is madness to rely on staff to manually comb through paper and digital files to produce the results that must be analyzed.

Firm culture and policies influence the specific conflicts search procedures followed, and the structure of the team that executes them, as quickly and accurately as possible.

Centralized searches commonly include **five steps**:

- #1** Identifying search names
- #2** Constructing search strategy
- #3** Reviewing results
- #4** Analyzing relevant hits
- #5** Resolving any issues

In each step of the process, we explore the diversity in the methods used and **note their potential challenges.**



## Step #1: Identifying search names

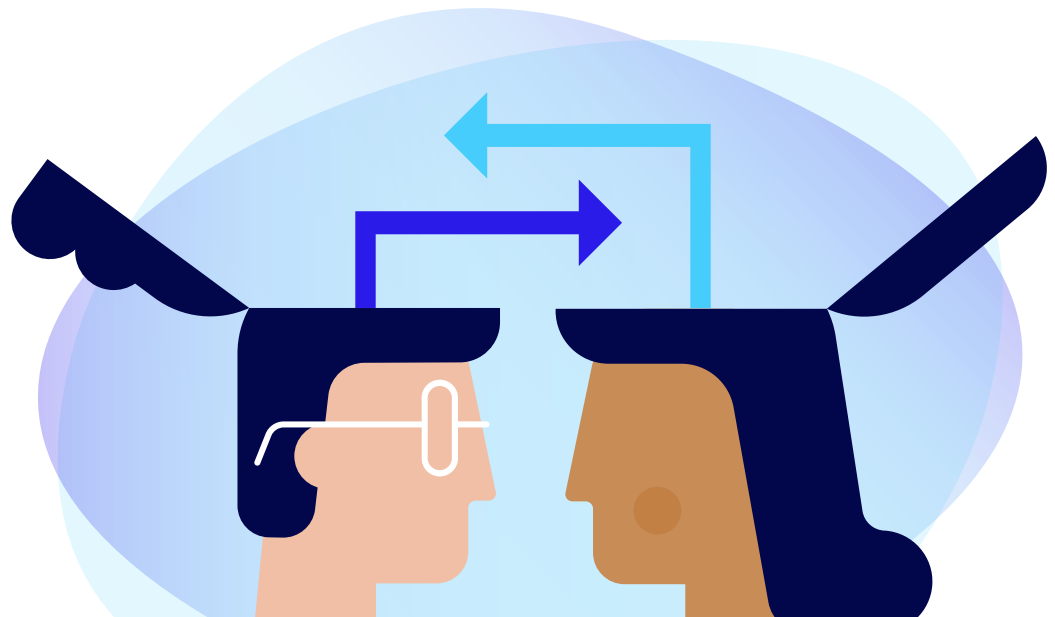
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The words or phrases of interest in a proposed matter are typically provided by the person who is bringing in the work. Relevant search names for a lateral hire search are usually provided by the lateral candidate. Names related to other searches, like business development searches or blog post searches, may be provided by the marketing department or blog author.

Search names often come to the conflicts search team without elaboration. In some firm cultures, names are searched “as is” so the requestor must provide complete information (or accept the consequences). Conflicts searching teams, however, often conduct corporate research, refine names, confirm the identity of entities, and confirm details with the requesting attorney. A firm may include vetting the search request itself as a formal step in the process, while others search only what they are given.

Firm policies may require a searcher to find and add the names of corporate affiliates to the search. The results of a corporate tree search – which may include searching entire corporate family trees on every party – can be overwhelming. Firms aim to uncover every possible conflicting relationship, but to conserve resources they may limit search terms to the ultimate parent, immediate parent, and direct subsidiaries, or search only for affiliates of new clients.

Limitations like these can create a disparity in the search coverage for the same name across both searches and searchers.





## Step #2: Constructing search strategy

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Once the conflicts search team has the search names, they decide what iterations and variations ensure a thorough search without going overly broad. Older search engines may require Boolean search conventions that use wildcard characters and multiple iterations of the same name.

Newer systems have features such as natural language searching, thesaurus, and built-in filtering capability – but with a caveat. Much of the functionality being invisible to the user, they may mistrust it and perform unnecessary, manual work and negate any promised efficiencies.

Searchers can also err by including search terms that are redundant from a system perspective, causing the search engine to waste time filtering duplicate results, or the reviewer to waste time analyzing them. On the other hand, searchers may make the search too specific and miss potentially relevant hits on system data that is incomplete or misspelled.



## Step #3: Reviewing Results

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In some firms a report that might be hundreds of pages long and filled with redundant and irrelevant results is sent directly to the requesting attorney for evaluation. Ideally these reports are structured to enable the reviewer to quickly identify potential problems.

The report format may be terrible, but they are reluctant to improve it because change management for the attorneys reviewing it would cost them extra, non-billable time.

Firms doing centralized searching typically perform some level of review before passing the results on for analysis. Some teams have specific authority to “clear” results that meet defined criteria but are required to escalate the rest. Even a simple deduping and confirmation of relevance of each result saves the requesting attorney time that could be spent more productively.

Reviewed results are often shared, or comments about specific results communicated, via email, with information from the search application rekeyed into an email summary, risking errors. Since the email occurs outside of the search application, the information contained in it is not readily available the next time that hit appears in a search result set. Centralized teams may therefore rely on institutional knowledge or an Outlook search in addition to their formal conflict search when a familiar name appears in a search request.





## Step #4: Analyzing relevant hits

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However the review is performed, relevant hits often surface. An analysis must help decide whether an issue can be resolved – and if so, how. For example, a proposed representation adverse to a former client requires analysis under the rules of professional conduct, whereas the proposed representation of a competitor of a large corporate client may require an analysis considering that client’s outside counsel guidelines.

The analysis often involves bringing the data in the system up to date. For instance, a conflicting matter may have a status of “open” in the finance system, and therefore in the result set, but a conversation with the attorney handling the conflicting matter reveals that the matter is in fact complete and can be closed. System data must be reconciled with real-time data.

If the analysis is performed by the central team, the results of the analysis may be passed back to the requesting attorney for resolution, usually through email. As noted, attorneys often have insights and information about clients and their relationships as well as details that aren’t yet or won’t be documented in the conflicts system.

Reviewing a concise, accurate list of significant hits produces a better result than looking for needles in the haystack. Attorneys can become frustrated or resentful toward the conflicts team if they need to wade through page after page of redundant information to bring a new matter in the door. An attorney’s billable time directly effects firm revenue, too, and assessing conflicts issues is not typically a billable task.

Firms must therefore decide how much to invest in the conflicts process, and whether that investment is in technology, or people, or both. They can hire searchers who perform more searches, faster, but these raw results are already outdated when the report comes in for analysis, so the return on investment may not compare to that of better tools and informed analysts who can escalate actionable hits.



## Step #5: Resolving any issues

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The centralized teams identify results and monitor their progress, often working manually using spreadsheets, storage drives, hard copies, and various lists to track documents and follow up on loose ends.

Some of the escalated hits require action in the form of consent letters, disclosures, ethical screens, courtesy conversations, etc. and the resulting documentation is typically saved in a matter file – in a location typically not accessible to the conflicts analyst the next time the matter produces a hit.

At the end of the conflicts search process, the responsible parties decide whether the subject of the request can move forward in compliance with firm policies, relevant rules, and regulations.



# THE ROLE OF LEADERSHIP

The identification of potential conflicts of interest is central to maintaining the firm's integrity. And while the "buck" may stop at the CEO, other key board-level positions and groups share in the accountability:

## CHIEF FINANCIAL OFFICER (CFO)

Champion of the firm's adherence to ethical and effective business practices, the CFO abhors payouts related to conflicts of interest. To avoid them, they can work to understand how the identification and mitigation of conflicts of interest is handled and to ensure that any investment in identification systems is appropriate, sufficient, and justified.

## CHIEF OPERATIONS OFFICER (COO)

Interested in the smooth functioning of the organization, its workstreams, and information sharing, and ensures that all technologies used contribute to a more efficient work environment. They can help identify technologies that effectively streamline processes and support workload management in the conflicts search process.

## CHIEF INFORMATION OFFICER (CIO)

Weighs the cost of technology against its benefit and may build or contribute to the business case for implementing new solutions. For example, artificial intelligence, or AI, could reduce the labor intensity of the process and more intelligently surface potential issues.

## PARTNERS AND OTHER ATTORNEYS

Individually responsible for conformity with the rules of professional conduct. Delegating pieces of the conflicts process to a centralized team should be done thoughtfully with an emphasis on building partnership between a centralized team and the billing attorneys.



# EVOLVING YOUR CONFLICTS SEARCH MODEL

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## A THOUGHTFUL AND CONSISTENT APPROACH

Mitigating risk requires a thoughtful and consistent approach to searching. Speed and accuracy in the search, review, and analysis increase business for the firm and contribute to its good reputation. But speed and accuracy, while not mutually exclusive, can be an elusive target to hit.

Within a dynamic system, a logically organized presentation of the information augmented by effective filtering and sorting is paramount to an efficient review. Users with visible and accessible fields for notes and comments related to the review can work quickly, track their progress, and share the thought process behind the review with the next person in the process.

## Access and securing the data

The tension between access and security runs parallel to the necessity of weighing the importance of speed against the need for accuracy in the conflicts process. Client and matter data is confidential, and a client's own information access restrictions may be stricter than the rules of professional conduct require.

Conflict searchers and analysts must have access to information and the ability to extend the data with conflict-relevant material without the worry that unauthorized parties may share that access.

# YOUR BLUEPRINT TO A SYSTEM THAT CAN EVOLVE WITH YOU

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Conflicts search applications should promote efficiency, uniformity and transparency of the search strategy and results, building trust with both the operational users and the attorneys. A high quality, reliable conflicts solution can be used by any team regardless of its structure and can evolve with the team as it grows and changes.

## **Advanced security and confidentiality**

To grow with a team and evolve with firm policies a conflicts solution must include advanced security based on user identity access rights and permissions, as well as the automatic obfuscation of information marked confidential when presented to users outside of the conflicts team.

## **Flexible, tailored reporting**

It is also critical that users have the ability to distribute results statically or dynamically in a familiar, but organized format, as well as via automatically generated emails that avert introducing rekeying errors.

## **Relevant, auditable results**

Filtered reporting to surface just the items being escalated supports efficiency, and enabling users to send and receive emails in the system provides both an audit trail of related correspondence and a record of the analysis.

## **Interactive experience**

Optimizing the process around actionable items, documenting progress, and providing an auditable history of the clearance of each hit requires a conflicts system with interactive clearance capability. This can save valuable time and money.

## **Intelligent customizable searching**

Corporate intelligence facility within the application is becoming an important feature, as well. Configurability and the option to build associations between firm clients and company numbers enables a firm to expand and update its corporate tree-searching over time. The ability to extend the search scope through connections with outside data sources to expedite affiliate searching is pivotal.



# RAPID VALUE WITH FUTURE SCALABILITY

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Law firms that continue to handle conflict processes with disconnected databases and legacy software cannot keep pace with today's changing regulations and heightened client expectations. The only way forward is to implement a solution that can streamline and automate as many tasks as possible within conflict searching and analysis.

You can realize compliance and business process enhancement at your pace, with the right tools and the right partner. iManage allows customers to take advantage of pre-built process elements to suit while focusing on their bespoke priority requirements.



## iMANAGE CONFLICTS MANAGER

Designed to detect potential conflicts of interest accurately and efficiently. It provides law firms with a 360-degree view of all types of conflicts, AI-supported issue spotting, interactive multi-device clearance options, and comprehensive audit history.



## iMANAGE BUSINESS INTAKE MANAGER

Automates the client-intake process and ensures that client information is complete, consistent, and accurate. A powerful workflow application that streamlines new business acceptance while maintaining regulatory and internal policy compliance.

But product functionality is just one of the elements that are crucial to your achieving successful outcomes.

We engage deeply with customer requirements and provide best-practice insights throughout the project lifecycle. Your appetite for change, your firm culture, resourcing, and where you are starting from are all weighed and measured in the services we recommend.

To learn more about how you can deliver meaningful risk management benefits across your organization by partnering with iManage, [contact us today](#).

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### About iManage™

iManage is the company dedicated to Making Knowledge Work™. Its intelligent, cloud-enabled, secure knowledge work platform enables organizations to uncover and activate the knowledge that exists inside their business content and communications. Advanced Artificial Intelligence and powerful document and email management create connections across data, systems, and people while leveraging the context of organizational content to fuel deep insights, informed business decisions, and collaboration. Underpinned by best of breed security, sophisticated workflows and governance approaches, iManage has earned its place as the industry standard through continually innovating to solve the most complex professional challenges and enabling better business outcomes for over one million professionals across 65+ countries.

Visit [www.imanage.com](http://www.imanage.com) to learn more.